

Before the
POSTAL REGULATORY COMMISSION
Washington, DC 20268-0001

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Mail Processing Network Rationalization)	Docket No. N2012-1
Service Changes, 2012)	
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REPLY BRIEF OF THE NATIONAL POSTAL MAIL HANDLERS UNION

INTRODUCTION

The National Postal Mail Handlers Union (“NPMHU”) submits this reply brief in response to the initial briefs filed in docket N2012-1 and, in particular, to respond to certain arguments raised in the Initial Brief of the United States Postal Service (“Postal Service”) (hereinafter, “USPS Brief”).

I. The Postal Service Denigrates the Proper Role of the Commission in the Section 3661 Review Process, Which is to Conduct a Comprehensive Review of the Proposal, Including the Estimated Savings Used to Justify the Proposal.

The Postal Service begins its Initial Brief by arguing that the Commission’s role in this proceeding is extremely limited. This argument does a disservice to the serious consideration that the Commission has given to the proposal in this docket, and, if accepted by the Commission, would render the Section 3661 review a largely pointless exercise.

The changes presented in this docket, by the Postal Service's own admission, "will be the most significant changes in the nature of service since the administrative review process in section 3661 was established as part of the 1970 Postal Reorganization Act." USPS Brief at 8. Due to the significance of these changes, the Commission has undertaken months of hearings and analysis in order to provide a forum for public input, as well as to apply its own specialized knowledge and expertise to evaluate proposed changes that "are likely to affect every sender and recipient of mail in the United States." *Id.*

Yet the Postal Service, hoping to avoid an examination and critique of the shortcomings in its own analysis and planning processes, argues that the role of the Commission is "relatively passive," confined to merely observing whether the proposed service changes are "permitted by the policies of title 39" and whether the Postal Service "has considered the factors in section 3691(c) and will achieve the objectives of section 3691(b)" in assembling its proposed service changes. *Id.* at 9-10, 96. According to the Postal Service, this circumscribed role does not include consideration of any financial implications—e.g., costs or benefits—of the proposed service change, as the Postal Service asserts that, once the Board of Governors acts, "the potential financial implications of . . . a change have already been considered to the extent the law required." *Id.* at 11.¹

¹ The Postal Service does concede that "if the magnitude of the cost/savings estimate were off in exponential terms, further financial analysis by the Commission could well be appropriate advice." USPS Brief at 11, n. 4. Based on the magnitude of mathematical and assumption errors contained in the Postal Service's cost/savings estimates, which overstate the savings by more than 100%, see NPMHU Init. Br. at pp 5-19, the NPMHU

The Commission should reject the Postal Service's limited view of the Section 3661 review process—as it has in previous cases. Rather, the Commission should apply the “comprehensive” standard of review articulated in its N2006-1 Advisory Opinion, in which the Commission considered and rejected an identical argument by the Postal Service in the context of an analogous network realignment proposal. See Advisory Opinion Concerning a Proposed Change in the Nature of Postal Services (Docket No. N2006-1) (December 19, 2006) at 12. Under this standard, derived from early opinions by the Commission, the Commission reviews the Service's stated goals: (1) “in light of the Postal Reorganization Act's policy declarations”; and (2) “to assess the apparent soundness of all the methods it intends to use in achieving those goals.” *Id.* at 13. In Docket No. N2006-1, the Commission found that, since the “overall effects on the postal system [of the proposed network realignment] cannot not be known in advance,” assessment of the “Service's stated goals” and “the apparent soundness of the methods it intende[d] to use” to implement network realignment was necessary in order to fully appraise the proposal under the Section 3661 process. *Id.* at 13.

Significantly, in the N2006-1 Opinion, the Commission explicitly rejected the Postal Service's argument that the Commission ought not to consider the costs of the proposed change or its precise overall impact, and found that it could not “fully perform its statutory responsibilities under section 3661 within the confines of scrutiny suggested by the Postal Service”:

Efficiency of postal services cannot be ascertained without reference to costs both before and after potential changes in the postal network. Further, the

submits that, even the unjustifiably deferential test set forth by the Postal Service is met in this case.

degree to which the [realignment program] is likely to achieve both efficiency and adequacy in providing postal services cannot be predicted without examining the methods to be used in the process of modifying current mail processing and transportation operations.

Id. at 12.

So too, in this proceeding, in order to satisfy the Commission's statutory obligations, the Commission must consider and provide informed advice on whether the plan is efficient and adequate in terms of cost and method of implementation. This is particularly so where the proposal has the effect of undermining the goals of 39 U.S.C. § 3691(b)(1)—by reducing the real “value of postal services,” the “regular and effective access to postal services in all communities,” and the speed at which mail is currently delivered—and is justified as a necessary evil precipitated by the need to cut long-term costs. In such circumstances, the Commission cannot provide advice that conforms to the policies of Title 39, without an examination into whether the cost-savings asserted by the Postal Service are real, and whether they justify the decline in postal service that will arise from this service standard change and significant network down-sizing. As Chairman Goldway noted in her concurring opinion in N2011-1, dozens of appeals from the post office closings “reveal a pattern of inaccurate and overly optimistic economic savings calculations” and “an ongoing institutional bias . . . that presumes closing small post offices automatically provides cost savings and network efficiencies.” Advisory Opinion on Retail Access Optimization Initiative (N2011-1) (December 23, 2011) at 118. The NPMHU submits that these same failings infect the Postal Service's proposal in this docket, and it is the Commission's proper role to advise the Postal Service regarding the shortcomings of this approach.

Finally, the Postal Service is not well situated to complain that “the breadth and length of administrative litigation under section 3661 prevent the Commission from providing timely advice as contemplated under Rule 72,” USPS Brief at 12, given the Postal Service’s own lack of diligence in these proceedings. The Postal Service regularly filed discovery responses late, submitting scores of Motions for Late Acceptance; failed to file the AMP studies with the Commission (Library Reference 73) until two weeks after those decisions were announced to the public; provided witnesses at hearing that were unable to respond to how the AMP decisions affected their testimony, requiring the Commission to order the submission of revised testimony and to schedule an additional hearing date; and failed to inform the Commission when it decided upon a modified, two phase plan, again requiring the scheduling of an additional hearing day. While the Postal Service may excuse its delays by pointing to the magnitude and evolving nature of the project before it, that is precisely the reason why the time spent by the Commission in considering this proposal is appropriate to its statutory role.

II. The Postal Service Overstates the Function of its Modeling Methodology in an Effort to Mask the Deficiencies in its Proposal.

In its Initial Brief, the Postal Service puts a surprising emphasis on its modeling efforts, which were previously described by the Postal witness most knowledgeable of these efforts as merely “a starting point for discussion.” Tr. at 1465:5-6. This re-casting of the work done by Witness Rosenberg’s team is a weak attempt to convince the Commission that the Postal Service’s plan is “supported by reliable, probative and substantial evidence.” USPS Brief at 40. However, the Postal Service’s attempt to

place this weight on a theoretical modeling effort only serves to demonstrate that, in fact, its proposal is not supported by reliable and probative data or analysis.

First, the Postal Service asserts in its brief that the “scoring tool” used to assess possible changes to the operating window, “allowed Witness Rosenberg and her team to find efficiencies across many different mail processing operations as well as the transportation network” and “to evaluate the costs and benefits of expanding mail processing operating windows and travel times between mail collection points, processing centers and delivery units.” USPS Brief at 42. This characterization directly contradicts Witness Rosenberg’s own testimony where she stated that “[c]osts were not considered. This [scoring tool] was a starting point for discussion. My testimony does not measure or analyze potential or relative cost savings. I have not performed any analysis of potential or relative cost savings.” Interr. Resp. NPMHU/USPS-T3-2. As further confirmed by Witness Rosenberg, the scoring tool did not have the functionality to consider costs or “optimize” the expanded windows during its calculations. Interr. Resp. NPMHU/USPS-T3-1; NPMHU/USPS-T3-2.

Further, as the Postal Service acknowledged in its brief, the outputs of the scoring tool have little to no relation to the operating window proposed to the Commission for review, and were merely “used as the baseline for consultations with postal mail processing and transportation managers” USPS Brief at 43; see *also* Interr. Resp. NPMHU/USPS-T3-3. Therefore, even assuming for the sake of argument that the scoring tool “optimized” its outputs in any fashion, this optimization in no way carried over to the Postal Service’s final proposed operating window.

Second, the Postal Service mischaracterizes the strength of the network modeling software by referring to the LogicNet modeling program as “least cost optimization software.” USPS Brief at 43. While this characterization might be descriptively true of LogicNet’s capabilities, the Postal Service’s modeling team admitted that it did not utilize the cost optimization functionality of the LogicNet software during the modeling process. Tr. 1517:9-13. Rather, as testified to by Witness Rosenberg, the LogicNet software was used to simply model a network that would pack as much volume as possible into fewer plants: “[A]gain, the LogicNet model isn’t specifically used for costing. So all the LogicNet does is assign the ZIPs to the plants.” *Id.*; see also Tr. 1524:7-10; 1509:14-20. To the extent that the model received inputs on cost, these estimates were “high-level strategic assumptions” or rough approximations that did not correspond to the actual figures used by Witnesses Bradley and Martin in calculating savings estimates. Interr. Resp. NPMHU/USPS-T3-24; NPMHU/USPS-T3-26. Moreover, the model developed by the LogicNet software was then modified extensively through a subjective consultation process with local-area management—a process that the Postal Service has yet to fully describe but that apparently did not include any cost calculations. See, e.g., Interr. Resp. of Witness Rosenberg NPMHU/USPS-T3-27 (noting that the local input process may have considered plant characteristics and zip code mapping features, with no mention of costs).

III. The Postal Service Fails to Rebut the First-Hand Testimony of the NPMHU Witnesses, Demonstrating that It Cannot Controvert this Testimony Demonstrating that The Proposal Has Significant Practical Problems.

In its rebuttal case, the NPMHU submitted the testimony of seven Mail Handlers and Union officials, each of whom has decades of experience working in mail

processing facilities across the country and representing thousands of additional workers in these facilities on a day-to-day basis. These witnesses described, based on their own experiences and the experiences of the Mail Handlers with whom they work, significant practical problems in the Postal Service's proposal. For instance, NPMHU Local 307 President James Haggarty described how the Grand Rapids, Michigan facility was formerly on a seventeen-hour operating schedule, but the Postal Service had to abandon this plan because the machines broke down too frequently. NPMHU-T4 at 3. Similarly, NPMHU Northeast Region Vice President Paul Hogrogian provided testimony that plant managers in his area had shared staffing plans indicating that there would be little to no reduction in overall staffing (and thus no labor savings) based on the extended operating window. See Testimony of P. Hogrogian (NPMHU-T2) at pp. 4-5 & Att. 1 at pp. 22-23, 26-28. These and other NPMHU witnesses, who have many years of experience with Postal staffing and with reading and applying AMP studies, also offer the Commission assistance when interpreting the many lengthy AMP studies submitted by the Postal Service and when attempting to understand the staffing needs for functions such as mail transfer hubs.²

The Postal Service had an opportunity to submit testimony to rebut each of these points, but failed to do so. The Commission therefore should accept these facts as uncontroverted.

Instead of trying to rebut this factual testimony on its merits, the Postal Service instead disparages the nature of the testimony, calling it mere "anecdotal allegations"

² *E.g.*, Direct Testimony of James Haggerty on Behalf of the National Postal Mail Handlers Union (NMPHU-T4) at 2-3.

that “do little to inform the Commission about the complex cost, mail processing, and policy issues raised by the Request in this docket.” USPS Brief at 108, 110. The Postal Service urged the Commission to accord little or no weight to the testimony of these seven witnesses, ignoring their years of practical experience, as the testimony was “mere conjecture and hypothesis” and “subjective assertions” proffered by witnesses based “exclusively on their experience as mail handlers” and “not supported by evidence.” *Id.* at 110-11.

The Postal Service's argument displays a telling misunderstanding of the nature of fact-based testimony. Fact testimony is testimony offered on the witness's own experience and observations, and thus such testimony will always be “anecdotal” in nature. Contrary to the objections raised by the Postal Service, the NPMHU witnesses are not proffered as experts in economics or business distribution models—the Commission has such expertise available to it from other sources. Rather, this testimony is offered to provide the Commission with first-hand observations that help to flesh out or complement the reams of data and technical testimony offered by other witnesses in this processing.³ The Postal Service's criticism that the NPMHU witnesses' testimony is “not supported by evidence” and not “supported by any statutory or regulatory basis,” and therefore “inappropriate for review in the current docket,” USPS Brief at 109, 111, misses the mark. The NPMHU testimony is supported by first-hand observations, which are the best sort of evidence. And testimony should not be

³ To the extent that our witnesses criticize the savings estimates, they do so based on basic mathematics that any layperson could do—for instance, adding up simple figures from the AMP studies to calculate relocation costs. *E.g.*, Response of M. Hora to USPS/NPMHU-T1-4.

based on a “statutory or regulatory basis,” as testimony should go to the *facts*, with the Commission’s role being to interpret those facts in light of the law.

Indeed, the Postal Service's disdain for the on-the-ground experience offered by the NPMHU-sponsored witnesses is telling of the Postal Service's approach to network consolidation. In developing the proposal before the Commission, the Postal Service has relied on "high level" assumptions, theoretical models, and a top-down approach, failing to give adequate consideration to how things actually work in practice.⁴ In arriving at its opinion, the Commission needs to consider not only the theoretical, but also the practical, as it is these practical considerations that will ultimately govern the mail service provided to the American public.

CONCLUSION

In closing, the NMPHU urges the Commission to conduct a comprehensive review of the Postal Service proposal in fulfillment of its statutory obligations under Section 3661 and, based upon the findings of that review, issue an opinion concluding that the Postal Service’s network rationalization proposal poses an excessive risk to the efficient delivery of the mail, especially given the uncertain cost savings, and providing the Postal Service with advice regarding a more sound methodology for determining how to align the postal network with reduced First-Class Mail volumes.

⁴ Moreover, in criticizing the NPMHU witnesses for not relying on technical data, the Postal Service misses the irony that its own network redesign proposal threw out the objective model derived by the computer modeling exercise in favor of a network and operating windows determined by the subjective judgments of Postal Service management, which has not tested those windows or network for feasibility.

Respectfully submitted,

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